

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 4492 OF 2005

DATED: 08.12.2005

Between:

M/s APIIC Limited

... Petitioner

and

The Presiding Officer, Labour
Court-I, Chandravihar Complex,
Mozamjahi Market Road, Nampally,
Hyderabad and another

... Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.4492 OF 2005

ORAL ORDER:

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The second respondent filed M.P.No.91 of 2003 before the Labour Court, under Section 33-C (2) of the Industrial Disputes Act, 1947 (for short 'the Act'), complaining that the writ petitioner-Management with whom he was employed and had retired on voluntary retirement scheme package had illegally deducted an amount of Rs.4,824/- towards income tax, from the ex-gratia and leave encashment benefits payable to the petitioner. According to the petitioner these benefits were non-taxable under the provisions of the Income Tax Act. The Labour Court allowed M.P.No.91 of 2003 and directed the writ petitioner-employer to refund Rs.4,824/- to the 2nd respondent. The Labour Court found that while paying the ex-gratia amount, an amount of Rs.2,768/- was deducted and another sum of Rs.2,056/- was deducted from the leave encashment amount; both non-taxable amounts. The Labour Court also found that these amounts were deducted towards the income tax payable on the salary paid to the petitioner for the periods March 2002 to July 2002.

The petitioner retired under a voluntary retirement scheme on 31.7.2002. From the salaries payable for the months March 2002 to July 2002, the writ petitioner failed to deduct the income tax. In the affidavit filed in support of the writ petition, jejune grounds are put forth stating that the 2nd respondent had not authorized them nor informed them as to how much income tax has to be deducted. Fact of the matter is that this (deduction of Income Tax from the monthly salary) is the obligation of the employer-to compute the tax deductible and deduct the same. No authorization for the employer from the employee is required.

In any event, the income tax (deductible from the salary payable to the petitioner) was not deducted during March 2002 to July 2002. Having realized the error of its ways, the writ petitioner employer deducted the income tax for the above said period, partly from the leave encashment and partly from the ex-gratia benefits. These are not amounts deducted by the writ petitioner for the leave encashment and

ex-gratia payments but towards the tax deductible for the salary paid. Admittedly, the salary drawn by the petitioner is taxable. There is no dispute as to the quantum of deduction. What the petitioner contended before the Labour Court, a contention which commended acceptance by the Labour Court, is that the workman had not authorized those deductions and the deductions were made without his permission. Income tax deductions by the employer from out of the salary payable to an employee are not required to be deducted after notice and opportunity to the employee.

The scope of determination and the jurisdiction of the Labour Court under Section 33-C (2) of the Act are limited. The adjudication of the very dispute as to whether the employer was authorized to deduct the income tax; whether such deduction required the consent of the employee are all issues which are outside the jurisdiction of the Labour Court, under Section 33-C (2) of the Act. These issues could be determined only in a regular proceedings and not under Section 33-C (2) of the Act, which is in the nature of a summary proceedings. For recovery of the amounts allegedly withheld from an employee/workman, which are patently illegal or unauthorized, without requiring an adjudication as to the validity of such withholding or recoveries by the employer, proceedings under Section 33-C (2) could be maintained.

For the aforesaid reasons, in the considered view of this court, the order of the Labour Court, Hyderabad dated 8.2.2005 in M.P.No.91 of 2003 is unsustainable. The impugned proceedings are accordingly quashed.

The Writ Petition is allowed. In the circumstances of the case, there shall be no order as to costs.

GODA RAGHURAM, J

Date: 08.12.2005

cvm